

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Mark Levine et al.
Serial No. : 10/699,997
For : DURABLE HIGHLY CONDUCTIVE SYNTHETIC
FABRIC CONSTRUCTION
Filing Date : November 3, 2003
Examiner : Andrew T. Piziali
Group Art Unit : 1794
Confirmation No. : 5362

745 Fifth Avenue
New York, NY 10151

October 3, 2008

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REASON FOR REQUEST

Claims 1-4, 7-8, 11-14, 16-17, 19-20, 22, 24, 27-28, 31-34, 36-37 and 39-40 are pending in the application and are rejected in the Final Office Action mailed on June 12, 2008 (the "Office Action"). Claims 5-6 and 25-26 are pending and withdrawn. Appellants respectfully request that the Panel consider the following arguments.

REMARKS/ARGUMENTS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the remarks herewith, which place the application into condition for allowance.

THE REJECTIONS UNDER 35 U.S.C. § 112 ARE IMPROPER

Claims 1-4, 7-14, 16, 17, 19, 20, 22, 23, and 39 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. As regards the rejections under 35 U.S.C. § 112, the Examiner has refused to enter the amendment such that the claims recite “fabric” instead of “belt.” The amendment was proffered only as an accommodation to render language of the claims consistent with that of the Specification. The amendment in no way changes the scope of the claim. Indeed, the Examiner’s rejection is based on a fundamental misreading of the Specification, as he alleges at page 2 that “[t]he specification discloses that the current invention may be drawn to a fabric used in making non-woven textiles and/or spunbonding process or the invention may be drawn to a fabric used in a dry application such as a belting media (page, 4 lines 5-13).” The Specification as cited, however, actually says “the invention is also applicable other industrial fabrics used in **any** “dry” applications where the dissipation of static electricity is required, through the belting media.” Emphasis added. As an ordinarily skilled artisan would readily understand, a fabric used in making non-woven textiles and/or spunbonding process is just such a dry application, and would not read an alternative interpretation into the description. Moreover, an ordinarily skilled artisan would readily understand that an industrial fabric used in making nonwoven textiles in the airlaid, meltblown, or spunbonding process is in belt form. Accordingly, the arguments below regarding the art do not change, regardless of which term is used, and the rejection under section 112 is improper.

THE REJECTIONS UNDER 35 U.S.C. § 103(a) HAVE BEEN OVERCOME

Claims 1-4, 7-8, 11-14, 16-17, 19-20, 22, 24, 27-28, 31-34, 36-37 and 39-40 were rejected under 35 U.S.C. § 103(a) over Takagi in view of Rohrbach. Takagi’s garment fabrics, which have a liner density of 200 denier or less, **cannot be used as an industrial fabric in an**

airlaid, meltblown or spunbonding process. At page 14, the Examiner proffers three rationales as justification for dismissing Appellants' evidence on this point. The Examiner's dismissal is improper, for the reasons that follow.

First the Examiner states that it is not clear that the Exhibit I is drawn to an industrial belt (fabric). The Exhibit explains that the belts disclosed in the Exhibit are for use on Reicofil machines. See pages 1, 4, 6, and 8-10. Appellants also directed the Examiner's attention to www.reicofil.com, where the machines used for its spunbonding and meltblown lines are shown. A cursory review of the website and the machines therein suffice to demonstrate that the Exhibit refers to an industrial fabric.

Second, the Examiner alleges Exhibits I and II are not sufficient evidence because they are drawn to PET, polyester, and nylon, instead of "the broad range of materials covered by the claim." The Examiner has incorrectly shifted the burden of proof. The material Takagi uses to exemplify its single fibers of 10-220 denier, and preferably 10-100 denier, is polyester, and polymide (nylon 6, nylon 66, etc.). See Col. 3, line 69 to Col. 4, line 7; Col 4 lines 27-30 to Takagi. **The Exhibits clearly show that Takagi's yarns are utterly inappropriate for the claimed industrial fabrics. In particular the evidence shows, as the Office Action acknowledges, that polyester and nylon – the very yarns Takagi disclose – must be of far greater strength and have far greater diameter and linear density to meet the requirements for the claimed industrial fabrics.** The Office Action has not provided any art or evidence that discloses or otherwise suggests that **Takagi's yarn** with a 200 denier or less can serve an industrial fabric, whereas Appellants have explained and **provided evidence** that the yarns of the art of record cannot. Thus Appellants have met any evidentiary burdens it may have had, and Takagi fails to disclose any yarn usable in an industrial fabric.

Lastly, the Examiner asserts that Appellants have not shown that all industrial fabric fibers must have denier greater than 200 denier. Appellants did not argue that all industrial fabric fibers must have a denier of 200 denier or greater, but those used in an industrial fabric used in making nonwoven textiles in the airlaid, meltblown or spunbonding processes must. As Appellants have already amply explained, fibers of 200 denier or less cannot withstand the stresses from applied tension, stretching, heavy loads, high speed and side-to-side movement, and thermal extremes and shocks attending the claimed processes. Accordingly, Appellants suggest that as Takagi is deficient as a reference, and as nothing in Rohrbach cures Takagi's deficiency, the above-recited claims are presently in condition for allowance and thus Appellants urge reconsideration and withdrawal of the rejections thereto.

Claims 1-4, 7-8, 11-14, 16-17, 19-20, 22-24, 27-28, 31-34, 36-37 and 39-40 are rejected under 35 U.S.C. 103(a) over Takagi in view of Rohrbach and Sillaots or Alex. As explained in the prior responses, **industrial fabrics (belts) used in making nonwoven textiles by airlaid meltblown, and spunbond processes must have air permeability (see page 3 of Exhibit 1), or else the belt would be inoperable.** The Office Action disagrees at page 15 of the Office Action, alleging that "applicant asserts the claimed industrial belt...must be impermeable to liquids," and that the "current specification does not even mention a belt used in a wet application," and that "the specification only mentions a belt used in a dry application." The Examiner wholly misinterprets the Appellants' arguments. **Appellants make no reference to wet processes or liquid permeability whatsoever.** As Appellants stated at page 13 of the prior response, **"industrial belts used in making nonwoven textiles by airlaid, meltblown and spunbond processes have to have air permeability (See page 3 of Exhibit I) or else the belt is rendered useless due to inoperability in a nonwoven forming environment."** Emphasis

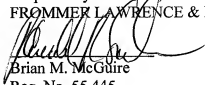
added. As an ordinarily skilled artisan understands, industrial belts used in making airlaid, meltblown and spunbond processes must be **permeable to air**. Accordingly, and as Applicants have amply evidenced, the recitation of a fabric for “making nonwoven textiles in the airlaid, meltblown or spunbonding processes” clearly conveys a structural characteristic such as air permeability, which is necessary for such a fabric, to an ordinarily skilled artisan. Hence the recitation cannot be dismissed as an intended use in view of the structure that the recitation conveys to an ordinarily skilled artisan. See M.P.E.P. §2173.05(g).

Finally, the Office Action dismisses Appellants’ arguments showing that Sillaots teaches a cross-lapping machine, which (a) is not used in airlaid, meltblown or spunbonding process and (b) teaches impermeable coated belts. At page 15, the Office Action merely repeats that “it is known in the nonwoven marking belt art to use antistatic plastics.” Appellants’ arguments of record directly address this allegation: Sillaots does not teach anti-static properties, as there is no need for static dissipation between fibers of the web on a belt and the belt itself.

In view of the foregoing, all of the claims in this application are patentable over the prior art and a Notice of Allowance is earnestly solicited. Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,
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